

# DYKEMA GOSSETT ROOKS | PITTS PLLC

10 South Wacker Drive  
Suite 2300  
Chicago, Illinois 60606  
WWW.DYKEMA.COM

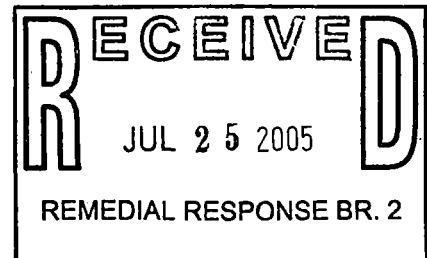
Tel: (312) 876-1700  
Fax: (312) 627-2302

**Jerome I. Maynard**  
Direct Dial: (312) 627-2185  
Email: JMAYNARD@DYKEMA.COM  
Via Messenger

July 21, 2005



James N. Mayka  
Chief Remediation  
U.S. EPA - Region 5  
Chief, Remedial Response Branch #2  
77 West Jackson Blvd., 6th Floor  
Chicago, IL 60604



Re: Himco Dump Superfund Site

Dear Mr. Mayka:

I am writing in response to the letter dated June 27, 2005 from U.S. EPA ("the Agency") rejecting the good faith offer to perform the remedial work at the HIMCO Dump Superfund Site ("the Site"). This response is made on behalf of the generator potentially responsible parties ("Generator PRPs") that participated in the good faith offer other than Bayer Corporation which has responded under separate cover for whom I am co-coordinating counsel along with W.C. Blanton.

The Generator PRPs are a group of parties that collectively, as well as individually, disposed of a relatively small volume of the wastes at the Site. We are aware of no evidence that any Generator PRP's wastes constitute more than 1% of the volume of wastes at the Site or that the toxic or other hazardous effects of those wastes were not minimal in comparison to other hazardous substances at the Site. As such, all of the Generator PRPs meet the criteria for a cash-out settlement, including a *de minimis* settlement, of the Agency's claims in this matter, pursuant to CERCLA § 122 and Agency policy.

The Generator PRPs have negotiated with Bayer and other PRPs in an attempt to reach a settlement that will result in the timely implementation of the Site remedial action and prevent prolonged and expensive litigation. The Generator PRPs have reached an agreement amongst themselves on funding a substantial share of the remedial costs, including a share of the Agency's past costs. They are ready and willing to settle potential liability for the Site through either a *de minimis* cash out settlement with the Agency or as part of an overall Site settlement. However, the Generator PRPs strongly believe that an overall settlement that will result in the

**DYKEMA GOSSETT  
ROOKS | PITTS PLLC**

James N. Mayka  
July 21, 2005  
Page 2

timely performance of the remedial action is in the best interests of all interested parties, including the Elkhart community. Therefore, they support Bayer's suggestion that a meeting to continue negotiations on an overall settlement be convened, and suggest that the participation of Agency management personnel may be helpful to furthering these negotiations.

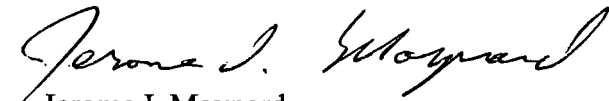
The Generator PRPs are concerned that the Agency's rejection of the good faith offer may result in termination of negotiations and the initiation of litigation. Those events would redound to no one's benefit. The Generator PRPs request that the Agency make every effort to negotiate an overall Site settlement before initiating enforcement legal proceedings.

The Generator PRPs are comprised of companies that are members of the Elkhart community. They have committed significant resources to a settlement that will allow the remedial work to be completed and the Site redeveloped so that it can become an asset to the community instead of the blight it has been. The Generator PRPs request that the Agency do everything it can to ensure that settlement is reached and litigation avoided.

Please do not hesitate to contact me at the number above or W.C. Blanton at (816) 983-8151 with any questions or to schedule a meeting.

Best regards,

**DYKEMA GOSSETT ROOKS PITTS PLLC**



Jerome I. Maynard

cc: L. Johnson, EPA  
G. Massenburg, EPA  
R. Oslan  
R. Paulen

CHICAGO\2127099.1  
IDJIM